

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2740 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BHAGCHAND @ BHAGUDO HIRALAL MOTWANI (SINDHI)

Versus

COMMISSIONER OF POLICE

Appearance:

MR SATISH R PATEL for Petitioner

MR LR POOJARI, AGP for Respondents

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 23/04/97

ORAL JUDGEMENT

By way of this petition under Article 226 of the Constitution of India, the petitioner-detenu has brought under challenge the detention order dated 18th January, 1997, rendered by Respondent No. 1 under Section 3 (1)

of the Gujarat Prevention of Anti-Social Activities Act, 1985 {Act No. 16 of 1985} (for short "The PASA Act").

2. The grounds on which the impugned order of detention has been passed appear at Annexure : C. They inter alia indicate that the detenu has been carrying on criminal and anti-social activities of storing and selling the country liquor and three prohibition cases have been registered under the provision of the Bombay Prohibition Act with City Police Station, Baroda against the petitioner-detenu as per the particulars set out in the grounds of detention.

3. It has been recited that the detenu's anti-social activities tend to obstruct the maintenance of public order and in support of the said conclusion, statements of three witnesses have been relied upon. It has also been recited that the detenu's activities are likely to adversely affect the public health.

4. The statements of these witnesses speak about incidents dated 30th December, 1996, 6th January, 1997 and 27th December, 1996 which indicate the detenu giving threats to the concerned witnesses and beating them in public and the detenu's conduct resulting in fear amongst the people collected there.

5. It is on the basis of the aforesaid cases and the incidents that the detaining authority has passed the impugned order of detention stamping the petitioner detenu as 'bootlegger' under Section 2 (b) of the PASA Act.

6. I have heard the learned advocate for the petitioner and the learned AGP for the State. The petitioner has challenged the impugned order of detention on number of grounds inter alia on the ground that there is no material to indicate that the detenu's conduct would show that he is habitually engaged in the anti-social activities, which can be said to be prejudicial to the maintenance of public order. This is a case of individual incidents affecting law and order and in the facts of the case would not amount to leading to a conclusion that the same would affect public order. Reliance has been placed on the decision of the Apex Court in the case of Mustakmiya Jabbarmiya Shaikh versus M.M Mehta, C.P., reported in 1995 (2) GLR p-1268. In that decision the Apex Court referred to two earlier decisions in the case of Arun Ghosh versus State of West Bengal, reported in 1970 (1) SC 98; and Piyush Kantilal Mehta versus Commissioner of Police, reported in 1989

Suppl. (1) SCC 322. In Piyush Kantilal Mehta's case (Supra), it was made clear that merely because a detenu was a bootlegger within the meaning of Section 2 (b) of the PASA Act, he could not have been preventively detained on that basis. The emphasis was with respect to whether his activities as a bootlegger would adversely affect that maintenance of public order.

7. In reply, learned AGP has made reference to an earlier decision of the Supreme Court in the case of Mrs. Harpreet Kaur Harvinder Singh Bedi versus State of Maharashtra & Anr., reported in AIR 1992 SC 979.

8. In my opinion, Mustakmiya's case (Supra) would apply to the facts of this case particularly since this is essentially a case of individual incidents dealing with law and order.

9. There are other grounds of challenge levelled against the impugned order of detention. However, in view of the fact that the petitioner would succeed on the strength of Mustakmiya's case, it is not necessary to deal with other grounds. Hence, following order is passed :-

The impugned order of detention is hereby
quashed and set-aside. The
petitioner-detenu Bhagchand @ Bhagudo
Hiralal Motwani (Sindhi) shall be
forthwith set at liberty, if he is not
required to be detained in any other
case. Rule made absolute accordingly.

Prakash*